

**MARIANO OSPINA,**

**Plaintiff,**

**v.**

**INDY MAC BANK,**

**Defendant.**

**THIS MATTER** is before the Court upon Plaintiff’s “Emergency Motion to Reconsider Emergency Motion for an Injunction.” (Doc. 46). Plaintiff requests the injunction to stay a North Carolina state court proceeding during the pendency of his petition for a writ of certiorari to the United States Supreme Court from the judgment of the United States Court of Appeals for the Fourth Circuit dismissing his appeal from the decision of the United States Bankruptcy Court for the Western District of North Carolina. This Court dismissed Plaintiff’s first emergency motion because the Court lacks jurisdiction. In that order, the Court took note that there was no record of Plaintiff’s petition for a writ of certiorari. Here, the Plaintiff has included the docket number and a copy of a letter from the Office of the Clerk of the Supreme Court of the United States acknowledging Plaintiff’s petition for a writ of certiorari. However, Plaintiff’s Motion must still be denied because this Court continues to lack jurisdiction pursuant to 28 U.S.C. §2101(f). That statute provides:

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay

may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

28 U.S.C. §2101 (2010). In his motion, Plaintiff asks this Court to stay the decision of the United States Court of Appeals pending his petition for a writ of certiorari. This Court did not “render[] the judgment or decree” from which Plaintiff seeks a stay. Thus, this Court does not have the authority to grant such relief. *Studiengesellschaft Kohle, mbH v. Novamont Corp.*, 578 F. Supp. 78, 79 (S.D.N.Y. 1983). Therefore, the motion is DENIED.

Signed: June 15, 2010

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

